

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Crl.MC.No. 3332 of 2007()

(CRIME NO.804/07 OF KARUNAGAPPALLY POLICE STATION)

PETITIONER:

**BALAGOPAL @ AMMANANPILLAI,
S/O.KRISHNA PILLAI, GOKULAM,
MUZHANGODI, THODIYOOR P.O., KARUNAGAPPALLY.**

BY ADV. SRI.T.GOPALAKRISHNAN

RESPONDENT: COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KARUNAGAPPALLY,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.**

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

KSS

R. BASANT, J.

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CrI.M.C. No. 3332 OF 2007 D
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Dated this the 23rd day of November, 2007

O R D E R

The petitioner is aggrieved by the order passed on his application under Section 451 Cr.P.C. rejecting the prayer for release of the vehicle seized in a crime registered by the police alleging commission of offences punishable under Section 55(h) of the Kerala Abkari Act.

2. The learned Magistrate, by the impugned order, took the view that proceedings under Section 67B are pending and, therefore, the petitioner is not entitled for an order under Section 451 Cr.P.C. The learned Public Prosecutor, after taking instructions, concedes that no notice under Section 67B has been issued so far. In these circumstances, I find merit in the challenge raised against the impugned order and I am satisfied that the directions can be issued under Section 451 Cr.P.C. to release the vehicle to the petitioner subject to appropriate terms and conditions.

3. In the result, this petition is allowed. The impugned order is set aside. The vehicle in question(motor cycle bearing registration No.KL-2U/7325) shall be released to the petitioner on the following terms and conditions:-

(i) The petitioner shall produce before the learned Magistrate all documents to show that he is the person entitled to possession of the vehicle;

(ii) The petitioner shall execute a bond for an amount equal to the value of the vehicle to be specified by the learned Magistrate, with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

(iii) In such bond, the petitioner shall undertake to produce the vehicle before the learned Magistrate or any other authority as the learned Magistrate may direct including the authority under Section 67B of the Kerala Abkari Act;

(iv) On compliance of the above conditions, the learned Magistrate shall issue release order and the vehicle shall be released to the petitioner in whose soever custody it may presently be.

(R.BASANT, JUDGE)

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